

39-3-1 Public officers and employees in military service -- Not to be prejudiced thereby -- Refusal to reinstate -- Procedure -- Motion -- Hearing and determination.

- (1) A public employee, public officer, or legislative employee, as defined in Section 67-16-3, who enters active service in any branch of the armed forces of this state or of the United States shall be granted a leave of absence during that service.
- (2)
 - (a) A person entitled to a leave of absence under this section shall be restored to the same position, or to a position equivalent to the same position, which the person held immediately prior to the commencement of active military service.
 - (b) A request for restoration of employment under this section must be submitted within 40 days after release from active service.
 - (c) Restoration of employment shall be made within 20 days after submission of the request to the employer.
 - (d) A person returning from active military service may not, without cause, be discharged or subjected to reduction of compensation for a period of one year following a return to employment under this section.
- (3) A person returning to employment under this section:
 - (a) shall retain all personal, sick, and other leave to which the person was entitled immediately prior to the commencement of active military service;
 - (b) shall receive and earn benefits and compensation at a level not less than that to which the person would have been entitled had the officer or employee not been absent due to active military service; and
 - (c) may not be prejudiced, by the preservice employer or that employer's successor in interest, as to employment, appointment, reappointment, reemployment, or promotion by reason of the employee's active military service.
- (4)
 - (a) No public employee, public officer, or legislative employee may be required to resign from, vacate, or forfeit a governmental office or position as a consequence of entering into active military service.
 - (b) A person in active military service is not considered to be holding an office or position of trust or employment under the United States government for purposes of determining whether that person is disqualified or prohibited from retaining a position or serving as a public employee, public officer, or legislative employee.
 - (c) Nothing in this section shall serve to extend a period of employment or term of office beyond that to which the affected person was elected or appointed. A person who is a legislator or public officer for a specific term by virtue of election or appointment is entitled to a leave of absence under this section for a period not to exceed the applicable term.
- (5) A person denied restoration of employment or benefits given under this section may petition the district court of the county in which the person resides, or in which the denial occurs, to require the public employer to comply with the provisions of this section without delay. Fees or court costs may not be assessed against the petitioner. The court shall order a speedy hearing in the case and advance it on the calendar so far as reasonably possible. If the court determines that the petitioner is entitled to relief, the court shall order all appropriate relief, to include compensation for loss of wages and benefits and an award of attorneys' fees and costs.

Repealed and Re-enacted by Chapter 65, 1991 General Session